

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3942 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

D.D. SWADIA--MAMLATDAR RAJKOT

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioner
M/S MG DOSHIT & CO for Respondent No. 1
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH
Date of decision: 15/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the decisions of the State Government in the Revenue Department as contained in the letter dated 24.4.1984 (Annexure "E" Pg.28) and in the letter dated 2.8.1984 (Annexure "H" Pg. 37) from the State Government to the Collector, Jamnagar in the matter of pay fixation of the petitioner. By the time when this petition has come up for hearing, the

petitioner has already retired from service and, therefore, the final outcome of this petition will also have some bearing on the question of fixation of the petitioner's pension and other retirement benefits.

2. The petitioner was appointed as a Junior Clerk in the revenue branch of the Jamnagar Collectorate in December, 1961 and was promoted as Deputy Mamlatdar (Aval Karkoon) on a regular basis and in the scale of Rs.145-165. The service particulars of the petitioner as given by the learned counsel for the petitioner in the form of list of dates and events are as under :-

"Dec. 1961 Appointed as Junior Clerk in
Revenue Department at Jamnagar
Collectorate.

16.03.1964 Promoted as Aval Karkoon i.e.
Deputy Mamlatdar on regular
vacancy and after selection in
the scale of Rs.145-165.

01.04.1964 Posted as Supply Inspector in the
pay scale of Rs.145-185.

01.10.1965 Posted as Godown Manager in the
scale of Rs.183 to 215.

17.01.1967 Posted as Accountant in the scale
of Rs.215-265.

01.06.1967 Pay scale of Accountant was
revised to Rs.250-420 under the
statutory rules of 1969 which was
given effect from 1.6.1967 and
the petitioner's pay was fixed at
Rs.310 duly verified and
approved.

01.01.1973 Pay scale of Accountant revised
to Rs.425-800 which came into
effect from 1.1.1973 and the
petitioner's pay was fixed at
Rs.538/- - fixation duly verified
and approved.

19.01.1974 Posted in the equivalent cadre of
District Record Keeper in the
same scale of Rs.425-800 and pay
was fixed at Rs.575/- where he

worked upto 5.7.1978 with intermittent ad-hoc promotion as Mamlatdar and was drawing Rs.655/- on 5.7.1978.

06.02.1982 Regularly selected and promoted as Mamlatdar carrying pay scale of Rs.650-1200 when he was drawing Rs.750/- in the cadre of Rs.425-800 in Accounts/District Record Keeper cadre. Petitioner's pay fixation in Mamlatdar post was made at Rs.650/- instead of Rs.810/- by the A.G. Order dated 24.4.1984 (Annexure "E") which decision was confirmed by the Revenue Department by letter dated 2.8.1984 (Annexure "H")

The subject matter of this petition is the decision of the State Government on the basis of the information of the Accountant General that at the time of the petitioner's promotion to the post of Mamlatdar in the scale of Rs.650-1200 the petitioner's pay was required to be fixed at Rs.650 and not at Rs.810 as originally fixed by the Collector.

3. In response to the notice issued by this court, affidavit in reply dated 21.10.1997 and further affidavit in reply dated 10.12.1997 have been filed. The affidavits are, of course, filed by an officer from the Collectorate, Jamnagar. The learned counsel for the petitioner has submitted that since the Collector's communication dated 26.6.1984 (Annexure "G") was in favour of the petitioner, the aforesaid affidavits filed by an officer from the Collectorate, Jamnagar cannot be taken into account. However, Mr VM Pancholi, learned AGP appearing on behalf of the respondents, State of Gujarat as well as the Accounts Officer in the Office of the Accountant General and Collector, Jamnagar has relied upon the said affidavits and has submitted that the said affidavits correctly reflect the Government's stand. The gist of the aforesaid affidavits is on the following lines :-

(i) Under the Gujarat Civil Services Pay Rules, 1969, initially the pay fixation was required to be done as on 1.6.1967 as per the provisions of Rule 9 thereof. Under the said provisions, the

initial pay of a Government servant was required to be fixed in respect of his substantive pay in the permanent post and also in respect of his pay in the officiating post held by him provided that in case where a Government servant has continuously officiated, in the post actually held by him for a period of three years or more on 1.6.1967, it will not be necessary to fix the pay of the lower post if the appointment to the post actually held by him was made by way of normal promotion from the lower post.

The petitioner was appointed on the post of Accountant on 17.1.1967. Hence, the petitioner had not completed three years service on the post of Accountant as on 1.6.1967. Hence, the fixation of the petitioner's pay as on 1.6.1967 on the post of Accountant was wrongly done and that mistake was required to be rectified.

(ii) Under the Gujarat Civil Services (ROP) Rules, 1975, under Rule 7 the initial pay of a Government servant was required to be fixed in respect of his substantive pay in the permanent post on which he holds a lien and also separately in respect of his pay in the officiating post held by him. Explanation 2 to the said Rule provides that in the case where on 1.1.1973, the Government servant has continuously officiated in a post for a period equal to three years or exceeding three years, it shall not be necessary to fix the pay of the lower post if the appointment to the post in which he has so officiated is made by way of normal promotion from the lower post,

The post of Accountant held by the petitioner on 1.1.1973 was not by way of normal promotion from the post of Mamlatdar. Normally promotion from post of Deputy Mamlatdar is to the higher post of Mamlatdar to which the petitioner was promoted in the year 1982. Hence, when the petitioner was promoted to the post of Mamlatdar, still the petitioner's pay was required to be fixed on the lower post of Deputy Mamlatdar on a date immediately prior to his promotion as Mamlatdar and on that basis the petitioner's pay was likely to be fixed at Rs. 650/-.

4. The learned counsel for the petitioner made the

following submissions :-

- (a) The petitioner was drawing Rs.750/- in the last pay scale of Rs.425-800 on the date of his promotion as Mamlatdar. On promotion as Mamlatdar he was entitled to get his pay fixed at Rs.810/- in the Mamlatdar's pay scale of Rs.650-1200.
- (b) The pay fixation of the petitioner at Rs.650/- in Mamlatdar's cadre on the date of his promotion was made on the basis of notional pay fixation as if the petitioner was a Deputy Mamlatdar after ignoring his promotion to higher non-gazetted post since 1967.
- (c) The petitioner's pay was already fixed after due verification under the Rules of 1969 and 1975 and could not have been reduced or revised by fixing notional pay in the Deputy Mamlatdar cadre even though the petitioner was promoted/posted to the higher pay scale of Rs.215-265, subsequently revised to Rs.250-420 which scales were higher than the scale of Deputy Mamlatdar at the relevant time in 1967 when the pay scale of that cadre was Rs.145-185 (see ground No. 3, 5 and 8 of the petitioner and the representation Annexure "C" Pg. 23).

5. On the other hand, Mr VM Pancholi, learned AGP for the respondents submitted that there was an obvious mistake while fixing the petitioner's pay under the ROP Rules, 1967 when the petitioner's pay was fixed in the pay scale of Accountant (Rs.250-420) although the petitioner was holding the said post only from 17.1.1967 and not for a period of three years prior to 1.6.1967.

Secondly, Mr Pancholi submitted that the post of Accountant was not a promotional post for Deputy Mamlatdars in the normal course and pointed out from the Government Circular dated 29.1.1974 that appointment to the posts of Accountants in the Civil Supply Department were not to be made on the basis of seniority in the cadre of Deputy Mamlatdars, but on the basis of experience in accounts work and aptitude for statistical work. It was found that when appointments to the posts of Accountants carrying higher pay scale were made merely on the basis of seniority in the cadre of Deputy Mamlatdars, Senior Deputy Mamlatdars on the verge of promotion to the cadre of Mamlatdars, would be appointed as Accountants and very soon would get promotion to the

cadre of Mamlatdars which obviously affected the accounts work of the Civil Supply Department. It was, therefore, also considered necessary to see that the persons to be appointed as Accountants in Civil Supply branch continued on such post for 4 to 5 years. Hence, the posts of Accountants were not considered to be normal promotional posts since 29.7.1974. Hence, the pay fixation done in the petitioner's case by giving him the benefit of revised pay-scales of Accountant with effect from 1.1.1973 and continuing the same benefit at the time of his promotion as Mamlatdar by fixing his pay at Rs.810/was not correct.

6. Having heard the learned counsel for the parties, it appears to the Court that while there is some substance in the submissions made by the learned AGP as regards the petitioner's pay fixation under ROP Rules, 1969, the submission that the petitioner's appointment to the post of Accountant was not by way of normal promotion cannot be accepted.

7. Coming to the pay fixation under the ROP Rules, 1969, admittedly the petitioner was appointed as an Accountant on 17.1.1967. He had not completed three years service on the post of Accountant as on 1.6.1997. Hence, his pay was required to be separately fixed in the lower pay scale of Deputy Mamlatdar or Aval Karkoon (Rs.145-165) which was the substantive post held by the petitioner. That pay fixation was required to be reflected while fixing the petitioner's pay in the post of Accountant at the time of pay fixation under the ROP Rules, 1973.

8. While undertaking this exercise of the petitioner's pay fixation under the ROP Rules, 1973, the petitioner's appointment to the post of Accountant was at the relevant time rightly treated as appointment by way of promotion in the normal course. It is pertinent to note that the petitioner was posted as an Accountant on 17.1.1967 and, therefore, whether it is called as promotion or appointment, it admittedly took place prior to issuance of the aforesaid circular dated 29.1.1974. It would, therefore, be reasonable to proceed on the footing that the appointments made prior to 29.1.1974 were on the basis of seniority. Hence, the petitioner can be treated to have been appointed as an Accountant on 17.1.1967 on the basis of seniority and the same could certainly be treated as an appointment by way of regular promotion because at that time the pay-scale of the post of Aval Karkoons (Deputy Mamlatdar) was Rs.145-165 whereas the pay-scale of Accountant was Rs.215-265 in

January, 1967 which came to be revised to Rs.250-420 with effect from 1.6.1967. Even otherwise, appointment to a post carrying higher pay-scale from amongst the persons holding post carrying lower pay-scale cannot be treated as promotion otherwise than in normal course merely because such appointment is not made on the basis of seniority. The circular letter dated 29.1.1974 clearly shows that appointment to the post of Accountant was thereafter to be made on the basis of experience in accounts work and aptitude for statistical work. In this view of the matter also, the persons getting appointment to the posts of Accountant cannot be deprived of the benefit of pay fixation at the time of their next promotion to the post of Mamlatdar.

Since on account of the impugned decision the petitioner's pay in the post of Mamlatdar as on 1.1.1973 came to be fixed only at Rs.650/-, the same was obviously incorrect. However, as to at what stage the petitioner's pay was required to be fixed under the ROP Rules, 1975 is not being decided by this Court as the said exercise will have to be undertaken by the respondents in accordance with the Rules and in light of the observations made in this judgment so that the petitioner's appointment to the post of Accountant on 17.1.1967 is considered as appointment by way of normal promotion.

9. One more aspect is required to be dealt with in as much as in the further affidavit in reply it is stated that the petitioner worked in different offices (post) in the cadre of Aval Karkoon or Deputy Mamlatdar but he continued to be paid the pay of accountant in the supply department during that period. Now, there is no dispute about the fact that from 10.2.1982 the petitioner was not working on the post of Accountant but with effect from 1.1.1973 the pay-scale of accountant and the pay-scale of Aval Karkoon/Deputy Mamlatdar was same i.e. Rs.425-800. Hence, upon the petitioner's coming back to the post of Aval Karkoon, there was no question of reduction of the petitioner's pay which he had already got in the cadre of accountants with effect from 1.1.1973. If at all any correction was required to be made, it was for correcting the mistake, if any, which might have been made while fixing the petitioner's pay under the Gujarat Civil Services (Revision of Pay) Rules, 1969.

O R D E R

10. In view of the above discussion, the petition is partly allowed. The impugned decisions dated 24.4.1984 (Annexure "E") and dated 22.8.1994 (Annexure "H") of the

State Government in the Revenue Department are quashed and set aside and the respondents are directed to refix the petitioner's pay at the time of the petitioner's promotion to the post of Mamlatdar in accordance with the Rules and in light of the findings given in this judgment. This exercise shall be done within a period of three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

After the aforesaid refixation, the respondents shall also refix the petitioner's pension and retirement benefits on the basis of the revised pay fixation in the cadre of Mamlatdar and Deputy Collector from which post the petitioner retired and to pay the petitioner the arrears of pension and retirement benefits within six months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

It is further directed that the respondents shall not make any recovery from the petitioner for the period between 1.6.1967 and 6.2.1982.

13. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

July 15, 1999 (M.S. Shah, J.)
sundar/-